(18)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
DIVISION BENCH

CORAM : HON'BLE SHRI H.L. DATTU, CJ &
HON'BLE SHRI V.K. SHRIVASTAVA, J.

MISC. APPEAL (C) NO. 349 OF 2007

APPELLANTS

1) Poharisharan Pandey S/o Rajvallabh Pandey aged about 63 years.

2) Smt jagdamba Devi W/o Poharisharan, aged about 57 years

Both R/o Under over Bridge, Baldev bag, Rajnandgaon Tah & Distt Rajnandgaon (CG)

Versus

RESPONDENTS

1) Bhagchand Sahu s/o Jhumuklal Sahu aged about 39 years, R/o Kolihapuri PS Chhuriya OP Chichola Distt.Rajnandgaon Tah & Distt.Rajnandgaon (CG)Through Pradeep Agrawal R/o Baldev Bag, Rajnandgaon Tah & Distt Rajnandgaon (CG

2) Pradeep Agrawal S/o Nathmal Agrawal R/o baldev Bag, Rajnandgaon Tah & Distt Rajnandgaon (CG)

3) Branch Manager, The Oriental Insurance Company Limited, Branch Kamthi Line Rajnandgaon (CG)

Present : Mr. Ratan Pusti, counsel for the appellants.

None for the respondents.

ORAL ORDER
(Passed on 23rd March, 2007)

The following oral order of the Court was passed by

Vijay Kumar Shrivastava, J.

This appeal by claimants under Section 173 of the Motor Vehicle Act 1988 (for short "the Act") has been directed for enhancement of the compensation, against the award dated 03.01.2007 passed by Motor Accident Claims Tribunal, Rajnandgaon (henceforth "the Tribunal") in Claim Case No.23/2004 whereby a sum of Rs. 1,35,000/- has been awarded to the appellants.

2) Briefly stated facts are that on 30.07.2004 Raghvendra Pandey (since deceased) along with his friend Hassan Beig Mirza, on Motorcycle No. CG-08/E/8315, was going to Gathula, on way he met with an accident caused by truck No. CG 08/ZC-0749 (for short, "the vehicle") and succumbed to the injuries. At the relevant time, respondent No.1 was driving the vehicle in a rash and negligent manner. He was bachelor, therefore, his parents, who are appellants herein filed an application under Section 166 of the Act, for grant of compensation against respondents who are driver, owner and insurer of the vehicle. All the respondents contested the claim.

3) The Tribunal after due appreciation of the evidence, allowed compensation as below :

a)	loss of dependency	Rs.1,08,000/-
b)	funeral expenses	Rs. 2,000/-
c)	mental agony and loss of love & affection	Rs. 25,000/-
	Total amount	Rs.1,35,000/-

4) Heard learned counsel for the appellants who contended that the Tribunal erred by deducting 50% of income of the deceased on the presumption of his being married in coming years and thereafter he has to incur expenditure on his own family.

5) From the award and finding of fact recorded by the Tribunal, it appears that appellants are aged more than 60 years. Income of the deceased was Rs.2,000/- per month. It is also evident that appellant No.1 is employed and appellant No.2 has also source of income, therefore, in these circumstances, the Tribunal expecting marriage of the deceased correctly assessed 50% dependency. The Tribunal allowed multiplier of 9 and recorded dependency Rs.1,08,000/- whereas schedule prescribes multiplier of 5. Here it is not out of place to mention that even if income is reduced to 2/3rd and correct multiplier i.e., 5 is applied the loss of dependency comes to Rs.80,000/- which is less than the amount allowed by the Tribunal.

6) We are of the considered opinion that the Tribunal although deducted 50% of the dependency, yet, allowed more than the amount permissible in accordance with law. Therefore, finding of facts recorded by the Tribunal and compensation allowed by it does not suffer from any illegality, or infirmity which may call for interference by this Court under its appellate jurisdiction. Therefore, the appeal is dismissed *in limine*.

Sd/-
Chief Justice

Sd/-
V.K. Shrivastava
Judge